## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

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CLE (, U.S. DISTRICT COUPT VICE VOISTRICT OF TOUR DY

PEDRO SOLIS SOSA, TDCJ No. 000778,

v.

Petitioner,

CIVIL NO. SA-00-CA-312-XR

DOUGLAS DRETKE, Director, Texas Department of Criminal Justice, Correctional Institutions Division,

Respondent.

## ORDER DENYING IMPLICIT REQUEST FOR CERTIFICATE OF APPEALABILITY

The matter before the Court is the petitioner's Notice of Appeal, filed June 21, 2004, and the implicit request for Certificate of Appealability contained therein.

In a detailed Memorandum Opinion and Order issued May 20. 2004, this Court denied petitioner's request for federal habeas corpus relief and preemptively denied petitioner a Certificate of Appealability. The Fifth Circuit has held that a Notice of Appeal is to be construed as implicitly containing a request for issuance of a Certificate of Appealability ("CoA"). For the reasons set forth at length in Section IV of this Court's Memorandum Opinion

<sup>&</sup>lt;sup>1</sup> <u>See</u> docket entry no. 29.

<sup>&</sup>lt;sup>2</sup> <u>See</u> docket entry no. 25.

<sup>&</sup>lt;sup>3</sup> See <u>United States v. Kimler</u>, 150 F.3d 429, 430-31 (5th Cir. 1998); <u>United States v. Cervantes</u>, 132 F.3d 1106, 1109 (5th Cir. 1998); <u>United States v. Youngblood</u>, 116 F.3d 1113, 1114 (5th Cir. 1997); <u>Hill v. Johnson</u>, 114 F.3d 78, 81 (5th Cir. 1997); and <u>United States v. Orozco</u>, 103 F.3d 389, 390-92 (5th Cir. 1996).

and Order, 4 petitioner is not entitled to a CoA. Out of an abundance of caution, this Court will formally deny petitioner's implicit request for CoA, contained in his Notice of Appeal.

Accordingly, it is hereby **ORDERED** that petitioner's implicit request for Certificate of Appealability, contained in petitioner's Notice of Appeal, filed June 21, 2004, <sup>5</sup> is **DENIED**.

SIGNED and ENTERED this \_\_\_\_\_\_ day of June, 2004, at San Antonio, Texas.

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XAVIER RODRIGUEZ
United States District Judge

<sup>&</sup>lt;sup>4</sup> <u>See</u> docket entry no. 25, at pp. 156-60.

<sup>&</sup>lt;sup>5</sup> <u>See</u> docket entry no. 29.